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Board of Vocational Nursing
and Psychiatric Technicians

8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2009-3151

13 **ADRIENNE GENEVIEVE YBANEZ**
14 **1497 Trenton Drive**
Riverside, CA 92506

A C C U S A T I O N

15 **Vocational Nurse License No. VN 210829**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about September 2, 2004, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 210829 to Adrienne Genevieve
25 Ybanez (Respondent). The Vocational Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on February 29, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the
7 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the
following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a crime substantially related to the qualifications, functions,
11 and duties of a licensed vocational nurse, in which event the record of the conviction
shall be conclusive evidence of the conviction.

12

13 10. Section 2878.5 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
a person licensed under this chapter to do any of the following:

16

17 (b) Use any controlled substance as defined in Division 10 of the Health and
18 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or herself,
19 any other person, or the public, or to the extent that the use impairs his or her ability
to conduct with safety to the public the practice authorized by his or her license.

20 (c) Be convicted of a criminal offense involving possession of any narcotic or
21 dangerous drug, or the prescription, consumption, or self-administration of any of the
substances described in subdivisions (a) and (b) of this section, in which event the
22 record of the conviction is conclusive evidence thereof.

23

24 REGULATORY PROVISIONS

25 11. California Code of Regulations, title 16, section 2521, states:

26 For the purposes of denial, suspension, or revocation of a license pursuant to
27 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
crime or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the

1 functions authorized by his license in a manner consistent with the public health,
2 safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

3 (a) Procuring a license by fraud, misrepresentation, or mistake.

4 (b) A conviction of practicing medicine without a license in violation of
5 Chapter 5 of Division 2 of the Business and Professions Code.

6 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
7 abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

8 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
9 whether a licensed physician or not, in the performance of or arranging for a violation
of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
Professions Code.

10 (e) Conviction of a crime involving fiscal dishonesty.

11 (f) Any crime or act involving the sale, gift, administration, or furnishing of
12 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
Business and Professions Code.

13 12. California Code of Regulations, Title 16, section 2522 states:

14 When considering a) the denial of a license under Section 480 of the Business
15 and Professions Code, b) the suspension or revocation of a license on the ground that
16 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
under Section 2787.7 of the Business and Professions Code, the Board in evaluating
the rehabilitation of an individual and his or her present eligibility for a license, will
17 consider the following criteria:

18 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

19 (2) Actual or potential harm to the public.

20 (3) Actual or potential harm to any patient.

21 (4) Overall disciplinary record.

22 (5) Overall criminal actions taken by any federal, state or local agency or court.

23 (6) Prior warnings on record or prior remediation.

24 (7) Number and/or variety of current violations.

25 (8) Mitigation evidence.

26 (9) In case of a criminal conviction, compliance with terms of sentence and/or
court-ordered probation.

27 (10) Time passed since the act(s) or offense(s) occurred.

1 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
2 Penal Code section 1203.4.

3 (12) Cooperation with the Board and other law enforcement or regulatory
4 agencies.

5 (13) Other rehabilitation evidence.

6 **COST RECOVERY**

7 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(July 7, 2010 Criminal Convictions for Driving Under the Influence on January 13, 2010)**

13 14. Respondent has subjected her license to disciplinary action under sections 490 and
14 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are
15 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
16 The circumstances are as follows:

17 a. On or about July 7, 2010, in a criminal proceeding entitled *People of the*
18 *State of California v. Adrienne Genevieve Ybanez*, in Riverside County Superior Court, case
19 number RIM10003439, Respondent was convicted on her plea of guilty of violating Vehicle
20 Code section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code
21 section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or
22 higher, misdemeanors. The court found true the allegations that Respondent's BAC was 0.15
23 percent or more pursuant to Vehicle Code section 23578, and that Respondent was previously
24 convicted of the same violations on December 7, 2005, as described in paragraph 17, below.

25 b. As a result of the convictions, on or about July 7, 2010, Respondent was
26 granted 48 months summary probation, and ordered to serve 15 days in the custody of the sheriff,
27 with credit for one day. Respondent was further ordered to complete an 18-month Drinking
28 Driver Program, pay fees, fines, and restitution in the amount of \$1,810, and comply with
standard DUI probation terms.

1 c. The facts that led to the conviction are that in or about the early morning of
2 January 13, 2010, officers with the California Highway Patrol (CHP) were patrolling the area of
3 Riverside when they observed a vehicle, driven by Respondent, with expired registration stickers.
4 A traffic stop was conducted. Upon contact with Respondent, the officer noted a strong odor of
5 an alcoholic beverage emitting from inside the vehicle, and Respondent's eyes were red and
6 watery. A records check revealed that Respondent's driver's license had been suspended.
7 Respondent submitted to a series of field sobriety tests, which she was unable to complete as
8 explained and demonstrated. Respondent provided two breath samples, which were analyzed
9 with a BAC of .142 and .143 by the preliminary alcohol screening device. Respondent was
10 arrested for driving under the influence of alcohol and provided a blood sample for testing during
11 booking.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

14 15. Respondent has subjected her license to disciplinary action under section 2878.5,
15 subdivision (b) of the Code for unprofessional conduct in that on or about January 13, 2010,
16 Respondent used alcohol in a manner dangerous or injurious to herself and others, in that she
17 operated a motor vehicle on a public roadway while intoxicated as described in paragraph 14,
18 above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Criminal Convictions Involving the Consumption of Alcohol)**

21 16. Respondent has subjected her license to disciplinary action under section 2878.5,
22 subdivision (c) of the Code for unprofessional conduct in that on or about July 7, 2010,
23 Respondent was convicted of alcohol-related crimes, as described in paragraph 14, above.

24 **DISCIPLINARY CONSIDERATIONS**

25 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
26 to California Code of Regulations, title 16, section 2522, Complainant alleges:

27 a. On or about December 7, 2005, in a prior criminal proceeding entitled *People*
28 *of the State of California v. Adrienne Genevieve Ybanez*, in Riverside County Superior Court,

1 case number RIM476102, Respondent was convicted of violating Vehicle Code section 23152,
2 subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152,
3 subdivision (b), driving with a BAC of 0.08 percent or higher, misdemeanors. As a result of the
4 convictions, Respondent was sentenced to 36 months summary probation, and ordered to serve
5 six days in the custody of the sheriff, with credit for one day. Respondent was further ordered to
6 complete a four-month First Offender DUI Program, pay fees, fines, and restitution in the amount
7 of \$1,621.40, and comply with standard DUI probation terms.

8 b. In a letter to Respondent dated June 23, 2006, an Enforcement Analyst from the
9 Board advised Respondent that the Board would not pursue disciplinary action against her license
10 at that time. However, Respondent was warned that future substantiated reports of similar
11 behavior, or other violations of the law, or violations of regulations governing the practice of a
12 vocational nurse, could result in disciplinary action against Respondent's license.

13 PRAYER

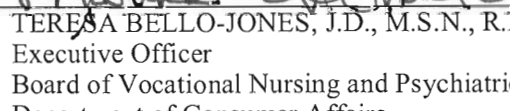
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
16 issue a decision:

17 1. Revoking or suspending Vocational Nurse License Number VN 210829, issued to
18 Adrienne Genevieve Ybanez;

19 2. Ordering Adrienne Genevieve Ybanez to pay the Board of Vocational Nursing and
20 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
21 pursuant to Business and Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: April 6, 2011.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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